KLESTADT & WINTERS, LLP
Tracy L. Klestadt
Patrick J. Orr
Carrie V. Hardman
570 Seventh Avenue, 17th Floor
New York, New York 10018
(212) 972-3000

Proposed Counsel to the
Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		Hearing Date: January 31, 2011 10:00 a.m.
In re:	:	Chapter 11
BRUNSCHWIG & FILS, INC.,	:	Case No. 11-22036 (RDD)
Debtor.	:	

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S MOTION FOR AN ORDER (I) AUTHORIZING DEBTOR (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(d)(1), AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTY PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364

The Official Committee of Unsecured Creditors (the "Committee") in the above-captioned Chapter 11 case of Brunschwig & Fils, Inc. (the "Debtor"), by and through its proposed counsel, Klestadt & Winters, LLP, as and for its limited objection to the *Debtor's Motion for an Order (I) Authorizing Debtor (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(D)(1), and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection to Prepetition Secured Party Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b)* *and (c)* (the "DIP Financing Motion") [Docket No. 7], respectfully sets forth as follows:

PRELIMINARY STATEMENT

1. The Committee appreciates the Debtor's stated need for immediate access to the DIP Facility[1] and the purposes for which such funding is necessary. However, the terms of the DIP Demand Note should reflect those purposes as well as the circumstances surrounding this case.

2. The Debtor commenced this case with the apparent intent of effectuating a quick sale to another member of the Debtor's industry – the DIP Agent. The DIP Agent, presumably, has proposed the DIP Facility as a way to bridge the gap until the sale process can be completed and it can integrate the Debtor's assets and business into its own to create what, again presumably, it believes will be a profitable venture.

3. The terms of the DIP Demand Note, combined with the protections that the Debtor seeks to afford the DIP Agent under the proposed sale, have the potential to create a windfall for the benefit of the DIP Agent and possibly to the detriment of the estate.

4. The Committee submits that several provisions of the DIP Demand Note should be modified to reflect the reality that the DIP Agent is a member of the Debtor's industry who stands to gain by bridging the short gap to sale and not an entity entitled to a windfall on the backs of unsecured creditors by providing stand-alone hard money financing to a company in crisis.

5. Accordingly, the Committee respectfully requests that the Final Order approving the DIP Financing Motion reflect the changes proposed by the Committee

[1] All capitalized terms shall have the meanings ascribed to them in the DIP Financing Motion.

herein.

BACKGROUND

6. On January 12, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Title 11 of Chapter 11 of the United States Code (the "Bankruptcy Code").

7. On the Petition Date, the Debtor filed various First-Day motions including the DIP Financing Motion and the Debtor's *Motion for Orders (I) Scheduling Hearing to Consider (A) Sale of Substantially All of the Debtor's Assets, Free and Clear of All Liens, Claims and Encumbrances, Subject to Higher and Better Offers; and (B) Assumption and Assignment of Executory Contracts; (II) Scheduling Hearing to Consider Approval of (A) Break-Up Fee/Expense Reimbursement and (B) Bidding Procedures for the Conduct of an Auction and Entering Order Thereon; (III) Fixing a Cure Claims Bar Date with Respect to the Assumption and Assignment of Executory Contracts; and (IV) Fixing Manner and Notice of Sale Hearing; (V) Authorizing the Debtor to Sell Assets, Free and Clear of All Liens, Claims and Encumbrances, Subject to Higher and Better Offers; and (VI) Authorizing Assumption and Assignment of Executory Contracts* (the "Sale Motion").

8. After a hearing on January 14, 2011, the Court entered the Interim Order [Docket No. 18] approving the DIP Financing Motion on an interim basis pending a final hearing.

9. On January 24, 2011, Cohen Brothers Realty Corporation filed an objection to the DIP Financing Motion (the "Cohen Objection").

10. On January 27, 2011, the Office of the United States Trustee appointed the five-member Official Committee of Unsecured Creditors composed of: (i) ADAC, LP, (ii) D&D Building Company, LLC, c/o Cohen Brothers Realty Corp., (iii) Michigan Design Center Limited Partnership, (iv) Tissus D'Avesnieres, and (v) United Parcel Service.

11. On January 27, 2011, the Committee selected Klestadt & Winters, LLP as its counsel, subject to the approval of this Court.

LIMITED OBJECTIONS

12. Several key terms of the DIP Demand Note are simply too onerous for the circumstances surrounding this case. The Committee believes that a Closing Fee of $80,000 and 12% interest for a facility of this kind are inappropriate. This is especially true in light of the purpose of the financing – to bridge the gap so that the DIP Agent can purchase the Debtor's assets. The Committee submits that the elimination of the Closing Fee and a 4% interest rate is appropriate and more in line with financing facilities of this type in cases currently pending before this Court. See In re Bozel S.A.; NYSB Case No. 10-11802-ajg; Docket No. 91 (4% interest on $8 million facility with no closing/transaction fee where lender was Stalking Horse Bidder).

13. In addition, the Committee shares some of the concerns raised by the Cohen Objection with respect to the following provisions in the proposed Final Order.

(a) The Final Order should not waive surcharge rights under Bankruptcy Section 506(c) with respect to the Prepetition Lender's collateral at this early stage in the case;

(b) The Committee should have automatic standing to commence any Challenge Claim, as defined in the DIP Financing Motion and proposed Final Order, and the sufficiency of the amounts budgeted for an investigation of a Challenge Claim should be subject to the Committee's review and input;

(c) The proposed Final Order should not exempt the Prepetition Lender from the equitable doctrine of "marshaling" of assets or other similar doctrines;

(d) The proposed Final Order should not prohibit the assertion of "equities of the case" arguments under the provisions of § 522(b) of the Bankruptcy Code with respect to the Prepetition Lender; and

(e) The proposed Final Order should not include a finding of "good faith" pursuant to Bankruptcy Code §364(e) with respect to the Prepetition Lender prior to the conclusion of any investigation of a Challenge Claim and the expiry of the deadline to bring such a claim.

14. While the Committee has had some discussions with counsel to the Debtor, counsel to the DIP Agent and Counsel to the Prepetition Lender regarding these issues, without an adjournment of the Final Hearing on January 31, 2011, the Committee was unable to resolve these issues to its satisfaction in the one full business day it had to address them.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) denying the DIP Financing Motion unless the Final Order is modified as set forth herein; and (ii) granting such other relief as the Court deems just and proper.

Dated: New York, New York
January 30, 2011

Respectfully submitted,

KLESTADT & WINTERS, LLP

By: /s/ Tracy L. Klestadt

Tracy L. Klestadt
Patrick J. Orr
Carrie V. Hardman
570 Seventh Avenue, 17th Floor
New York, New York 10018
(212) 972-3000

Proposed Counsel to the
Official Committee of Unsecured
Creditors